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## Hurricane IKE

ZCZC MIATCPAT4 ALL  
TTAA00 KNHC DDHMM  
BULLETIN  
HURRICANE IKE INTERMEDIATE ADVISORY NUMBER 48B  
NWS TPC/NATIONAL HURRICANE CENTER MIAMI FL AL092008  
200 AM CDT SAT SEP 13 2008

...EYE OF IKE MOVING ONTO THE TEXAS COAST NEAR GALVESTON....LANDFALL  
EXPECTED IN THE NEXT HOUR OR TWO...

A HURRICANE WARNING REMAINS IN EFFECT FROM MORGAN CITY LOUISIANA TO  
NORTH OF PORT ARANSAS TEXAS. HURRICANE CONDITIONS ARE EXPECTED TO  
REACH THE COAST IN THE WARNING AREA LATER TODAY.

AT 2 AM CDT...0700 UTC...THE TROPICAL STORM WARNING IS DISCONTINUED  
FROM PORT ARANSAS SOUTHWARD. A TROPICAL STORM WARNING REMAINS IN  
EFFECT FROM EAST OF MORGAN CITY TO THE MISSISSIPPI-ALABAMA  
BORDER...INCLUDING THE CITY OF NEW ORLEANS AND LAKE PONTCHARTRAIN.

FOR STORM INFORMATION SPECIFIC TO YOUR AREA...INCLUDING POSSIBLE  
INLAND WATCHES AND WARNINGS...PLEASE MONITOR PRODUCTS ISSUED  
BY YOUR LOCAL WEATHER OFFICE.

AT 200 AM CDT...0700Z...THE CENTER OF HURRICANE IKE WAS LOCATED  
NEAR LATITUDE 29.2 NORTH...LONGITUDE 94.7 WEST OR ABOUT 10 MILES...  
15 KM...SOUTHEAST OF GALVESTON TEXAS AND ABOUT 60 MILES...100  
KM...SOUTHWEST OF PORT ARTHUR TEXAS.

IKE IS MOVING TOWARD THE NORTHWEST NEAR 10 MPH...16 KM/HR. A  
NORTHWEST TO NORTH-NORTHWESTWARD MOTION IS FORECAST TO CONTINUE  
THIS MORNING...WITH A TURN TOWARD THE NORTH EXPECTED SATURDAY  
AFTERNOON. THE CENTER OF IKE SHOULD CROSS THE TEXAS COAST NEAR  
GALVESTON IN THE NEXT HOUR OR TWO...THEN MOVE OVER SOUTHEASTERN  
TEXAS THE REMAINDER OF SATURDAY MORNING.

DATA FROM NOAA DOPPLER WEATHER RADARS AND RECONNAISSANCE AIRCRAFT  
INDICATE MAXIMUM SUSTAINED WINDS REMAIN NEAR 110 MPH...175 KM/HR...  
WITH HIGHER GUSTS. IKE IS A STRONG CATEGORY TWO HURRICANE ON THE  
SAFFIR-SIMPSON SCALE AND COULD REACH THE TEXAS COAST AS A CATEGORY  
THREE...MAJOR HURRICANE...AT THE TIME OF LANDFALL. STRONGER  
WINDS...AS MUCH AS 30 MPH HIGHER THAN AT THE SURFACE...COULD OCCUR  
ON HIGH RISE BUILDINGS.

IKE REMAINS A VERY LARGE HURRICANE AND HURRICANE FORCE WINDS EXTEND  
OUTWARD UP TO 120 MILES...195 KM...FROM THE CENTER...AND TROPICAL  
STORM FORCE WINDS EXTEND OUTWARD UP TO 275 MILES...445 KM.  
HURRICANE CONDITIONS ARE OCCURRING ON THE TEXAS COAST BETWEEN  
FREEPORT AND SABINE PASS. THE NOAA AUTOMATED STATION AT SEA RIM  
STATE PARK TEXAS RECENTLY REPORTED 10-MINUTE AVERAGE WINDS OF 76  
MPH...122 KM/HR...AND A WIND GUST OF 99 MPH...159 KM/HR.

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THE MINIMUM CENTRAL PRESSURE JUST REPORTED BY AN AIR FORCE RESERVE HURRICANE HUNTER AIRCRAFT IS 953 MB...28.14 INCHES.

COASTAL STORM SURGE FLOODING OF UP TO 20 FEET...WITH NEAR 25 FEET IN SOME AREAS...ABOVE NORMAL TIDES ALONG WITH LARGE AND DANGEROUS BATTERING WAVES...CAN BE EXPECTED NEAR AND TO THE EAST OF WHERE THE CENTER OF IKE MAKES LANDFALL. THE SURGE EXTENDS A GREATER THAN USUAL DISTANCE FROM THE CENTER DUE TO THE LARGE SIZE OF THE CYCLONE. WATER LEVELS HAVE ALREADY INCREASED TO 9 TO 12 FEET ABOVE NORMAL TIDE LEVELS ALONG MUCH OF THE NORTHWESTERN GULF COAST.

DO NOT VENTURE OUTSIDE IN THE EYE. THE STRONGEST WINDS AND HIGHEST SURGE WILL LIKELY OCCUR NEAR OR JUST AFTER THE EYE MAKES LANDFALL.

IKE IS EXPECTED TO PRODUCE RAINFALL AMOUNTS OF 5 TO 10 INCHES OVER EASTERN TEXAS AND EXTREME SOUTHWESTERN LOUISIANA...WITH ISOLATED AMOUNTS OF 15 INCHES POSSIBLE.

ISOLATED TORNADOES ARE POSSIBLE TODAY OVER PORTIONS OF EASTERN AND SOUTHEASTERN TEXAS...AND SOUTHERN AND WESTERN LOUISIANA.

REPEATING THE 200 AM CDT POSITION...29.2 N...94.7 W. MOVEMENT TOWARD...NORTHWEST NEAR 10 MPH. MAXIMUM SUSTAINED WINDS...110 MPH. MINIMUM CENTRAL PRESSURE...953 MB.

THE NEXT ADVISORY WILL BE ISSUED BY THE NATIONAL HURRICANE CENTER AT 400 AM CDT.

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FORECASTER BEVEN/RHOME

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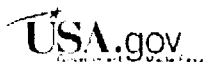


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## Hurricane IKE

ZCZC MIATCEAT4 ALL

TTAA00 KNHC DDHMM

HURRICANE IKE TROPICAL CYCLONE POSITION ESTIMATE

NWS TPC/NATIONAL HURRICANE CENTER MIAMI FL AL092008

300 AM CDT SAT SEP 13 2008

AT 3 AM CDT...0800Z...THE CENTER OF LARGE HURRICANE IKE WAS ESTIMATED BY NOAA DOPPLER WEATHER RADAR AND SURFACE OBSERVATIONS TO BE NEAR LATITUDE 29.5 NORTH...LONGITUDE 94.9 WEST OR NEAR SAN LEON TEXAS. THIS IS ALSO ABOUT 15 MILES...25 KM...NORTH-NORTHWEST OF GALVESTON TEXAS.

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FORECASTER BEVEN

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## Hurricane IKE

ZCZC MIATCPAT4 ALL  
TTAA00 KNHC DDHMM  
BULLETIN  
HURRICANE IKE ADVISORY NUMBER 49  
NWS TPC/NATIONAL HURRICANE CENTER MIAMI FL AL092008  
400 AM CDT SAT SEP 13 2008

...EYE OF IKE MOVING INLAND ACROSS THE GALVESTON-HOUSTON AREA...

AT 4 AM CDT...0900 UTC...THE HURRICANE WARNING IS DISCONTINUED SOUTH OF PORT O'CONNOR TEXAS. A HURRICANE WARNING REMAINS IN EFFECT FROM MORGAN CITY LOUISIANA TO PORT O'CONNOR TEXAS.

AT 4 AM CDT...0900 UTC...THE TROPICAL STORM WARNING IS DISCONTINUED EAST OF MORGAN CITY LOUISIANA.

FOR STORM INFORMATION SPECIFIC TO YOUR AREA...INCLUDING POSSIBLE INLAND WATCHES AND WARNINGS...PLEASE MONITOR PRODUCTS ISSUED BY YOUR LOCAL WEATHER OFFICE.

AT 400 AM CDT...0900Z...THE CENTER OF HURRICANE IKE WAS LOCATED NEAR LATITUDE 29.7 NORTH...LONGITUDE 95.0 WEST OR NEAR BAYTOWN TEXAS. THIS POSITION IS ABOUT 30 MILES... 50 KM...NORTH-NORTHWEST OF GALVESTON TEXAS AND ABOUT 25 MILES... 40 KM...EAST OF HOUSTON TEXAS.

IKE IS MOVING TOWARD THE NORTHWEST NEAR 13 MPH...20 KM/HR. A TURN TOWARD THE NORTH IS EXPECTED LATER TODAY...WITH A TURN TOWARD THE NORTHEAST AND AN INCREASE IN FORWARD SPEED EXPECTED TONIGHT AND SUNDAY. ON THE FORECAST TRACK...THE CENTER OF IKE WILL MOVE THROUGH SOUTHEASTERN AND EASTERN TEXAS TODAY...AND INTO WESTERN ARKANSAS TONIGHT.

MAXIMUM SUSTAINED WINDS ARE NEAR 110 MPH...175 KM/HR...WITH HIGHER GUSTS. IKE IS A CATEGORY TWO HURRICANE ON THE SAFFIR-SIMPSON SCALE. WEAKENING IS EXPECTED AS THE CENTER MOVES FARTHER INLAND...ALTHOUGH IKE IS EXPECTED TO REMAIN A HURRICANE THROUGH THIS AFTERNOON.

HURRICANE FORCE WINDS EXTEND OUTWARD UP TO 125 MILES...205 KM...FROM THE CENTER...AND TROPICAL STORM FORCE WINDS EXTEND OUTWARD UP TO 260 MILES...415 KM. HURRICANE-FORCE WINDS ARE LIKELY TO OCCUR WELL INLAND NEAR AND TO THE EAST OF THE CENTER. PORT ARTHUR TEXAS RECENTLY REPORTED A WIND GUST OF 96 MPH...154 KM/HR.

THE ESTIMATED MINIMUM CENTRAL PRESSURE IS 954 MB...28.17 INCHES. THE NATIONAL OCEAN SERVICE STATION AT THE GALVESTON PLEASURE PIER REPORTED A MINIMUM PRESSURE OF 951.6 MB...28.10 INCHES...AS THE EYE OF IKE PASSED OVER THE STATION.

COASTAL STORM SURGE FLOODING OF UP TO 20 FEET...WITH POSSIBLY UP TO 25 FEET IN BAYS AND RIVERS...ABOVE NORMAL TIDES ALONG WITH LARGE

C00220

AND DANGEROUS BATTERING WAVES...CAN BE EXPECTED ALONG THE UPPER TEXAS AND SOUTHWESTERN LOUISIANA COASTS. THE SURGE EXTENDS A GREATER THAN USUAL DISTANCE FROM THE CENTER DUE TO THE LARGE SIZE OF THE CYCLONE. AUTOMATED TIDE GAGES ALONG THE UPPER TEXAS COAST ARE REPORTING STORM SURGES OF 9 TO 12 FT ABOVE NORMAL TIDE LEVELS.

DO NOT VENTURE OUTSIDE IN THE EYE. THE STRONGEST WINDS AND HIGHEST SURGE WILL LIKELY OCCUR NEAR OR JUST AFTER THE EYE MAKES LANDFALL.

IKE IS EXPECTED TO PRODUCE RAINFALL AMOUNTS OF 5 TO 10 INCHES OVER EASTERN TEXAS AND EXTREME SOUTHWESTERN LOUISIANA...WITH ISOLATED AMOUNTS OF 15 INCHES POSSIBLE.

ISOLATED TORNADOES ARE POSSIBLE TODAY OVER PORTIONS OF EASTERN AND SOUTHEASTERN TEXAS...AND SOUTHERN AND WESTERN LOUISIANA. ISOLATED TORNADOES ARE POSSIBLE TONIGHT OVER PORTIONS OF WESTERN LOUISIANA...MUCH OF ARKANSAS...AND SOUTHERN MISSOURI.

REPEATING THE 400 AM CDT POSITION...29.7 N...95.0 W. MOVEMENT TOWARD...NORTHWEST NEAR 13 MPH. MAXIMUM SUSTAINED WINDS...110 MPH. MINIMUM CENTRAL PRESSURE...954 MB.

INTERMEDIATE ADVISORIES WILL BE ISSUED BY THE NATIONAL HURRICANE CENTER AT 600 AM CDT AND 800 AM CDT FOLLOWED BY THE NEXT COMPLETE ADVISORY AT 1000 AM CDT.

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FORECASTER BEVEN

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C00221

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

GREG GLADDEN,	§
<i>Plaintiff</i>	§
v.	§ CIVIL ACTION NO. 4:09-cv-00032
	§
LARRY MORRISON,	§ IN ADMIRALTY
CHRYSTAL MORRISON &	§
S/V JEANETTE MARIE, her sails	§
Engine, appurtenances, etc., <i>in rem</i> ,	§
<u><i>Defendants</i></u>	§

DECLARATION OF ROY NEWBERRY IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

I, Roy Newberry, declare as follows:

1. The facts in this declaration are based upon my personal knowledge. If called to testify, I could testify competently to the facts described in this declaration.

Background

2. I am the owner of Newberry & Associates Marine Surveying Company, in Seabrook, Texas.

3. I was contacted by Mr. Greg Gladden to investigate the destruction of the S/V DIABLESSE and to offer an opinion on the valuation of the DIABLESSE prior to its destruction.

4. My compensation for this investigation is set at \$125 per hour.

At this point I have been paid \$4,787.50.

My Experience – Accident Investigations and Valuation Services

5. I have been involved in the pleasure boat industry since 1979. I have been an owner, sailor, delivery skipper and vessel captain for more than 40 years. I have held 100, 300, and 500-ton licenses issued by the United States Coast Guard that entitles me to act as captain of vessels of those sizes. I have let those licenses expire.

6. I have over 375,000 ocean miles logged on various types of vessels from 20 to 185 feet.

7. I have worked for and represented various insurance and loss management companies, including Lloyds of London, State Farm Insurance Company, Farmers Insurance Company, and numerous others for over 29 years.<sup>1</sup>

8. I personally conduct hull and valuation surveys of yachts and pleasure craft of all sizes. These surveys are relied on by vessel owners and insurance companies alike in determining whether to insure a vessel and, if so, at what value. Sellers and buyers of vessels also rely on my surveys to

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<sup>1</sup> Newberry Exhibit 1:1 – 2 Curriculum Vitae.

determine the condition and value of vessels that are the subject of proposed purchase and sale agreements between them.

9. I am also consulted by insurance companies and vessel owners regarding the cause of losses and damage. I have been retained on over 400 occasions to inspect and evaluate vessel losses.

10. I have also been a presenter at numerous boating seminars regarding safety, docking, mooring, preventative maintenance, and navigation. In particular, I am routinely invited to and speak at hurricane preparedness and offshore sailing seminars. Over the last 30 years, I have spoken at more than 200 of these seminars.

11. I am a member of various trade groups, including the Society of Accredited Marine Surveyors.<sup>2</sup>

12. I am quite familiar with the S/V DIABLESSE, having raced offshore on her a number of times over the years under her prior owner. I also reviewed photographs of the S/V DIABLESSE taken prior to her destruction and an extensive list of equipment and improvements made by Mr. Gladden.

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<sup>2</sup> Newberry Exhibit 1:2 – 3 complete list.



13. I am also familiar with Harborwalk Marina where S/V DIABLESSE was docked at the time Hurricane Ike hit. I have surveyed 18 boats at Harborwalk Marina in the past.

14. I have experienced 30 hurricanes or tropical storms hitting the Galveston Bay area over the last 45 years and have surveyed 300 boats following hurricanes and storms both for owners and for insurance companies. I have been asked on 50 prior occasions to render opinions regarding the causes of those losses and damages.

15. I have testified on over 100 occasions as an expert and have been accepted as such in trials by judges on the Texas and federal benches, including *Boucvalt v. Sea-Trac Offshore Servs*, (5<sup>th</sup> Circuit Court of Appeals).

Applying the Standards and Guidelines to This Case

16. S/V DIABLESSE sunk in her slip during Hurricane Ike, after which S/V JEANETTE MARIE was found sitting in DIABLESSE's slip, floating over the top of DIABLESSE. Photographs and depositions of Greg Gladden and Crystal and Larry Morrison I have reviewed in fact support both of these premises. I was asked to determine what caused DIABLESSE to sink, whether the cause of the sinking was an act of God or due to

negligence on the part of someone, if so, who, and the fair market value of DIABLESSE immediately prior to her loss.

17. During my investigation I was able to observe photos of S/V DIABLESSE out of the water and the S/V JEANETTE MARIE out of the water after the storm. I was also given photographs of DIABLESSE and JEANETTE MARIE while moored in their slips prior to the storm and immediately after the storm. Copies of depositions of Greg Gladden and the owners of JEANETTE MARIE, Larry and Crystal Morrison, were provided to me, which detailed how the two vessels had been prepared for the storm. The photographs also showed the configuration of the dock at which both vessels were moored prior to the storm.

18. I also reviewed weather reports before and during the storm, describing the intensity of Hurricane Ike. Finally, I also considered my knowledge of Gulf Coast storms, Harborwalk Marina, damage in prior storms along the Gulf Coast, and reports available through National Oceanic and Atmospheric Administration. I was at Galveston or in the Galveston Bay area during Hurricane Ike. I remained at Lakewood Yacht Club marina during Hurricane Ike and was able to observe the actions of many sailboats in their slips during the storm.

19. The probability of damage to nearby property from improperly secured vessels from a Hurricane predicted to bring winds at the 98 to 121 mile per hour range was extremely high.

Opinion Regarding the Cause of the Loss of S/V DIABLESSE

20. It is my opinion that S/V DIABLESSE was sunk when the dock lines on S/V JEANETTE MARIE parted during Hurricane Ike, causing JEANETTE MARIE to be blown into the finger pier that separated the two boats, battering a breach in the intermediate finger pier, and then was blown down on DIABLESSE, battering a hole in her hull below the water line, causing her to sink. A full description of the mechanics of this event is contained in my attached report.

21. I observed photos of the hull of DIABLESSE after she was hauled out of the water following the storm. Her underside showed clear evidence that she had been repeatedly rammed by a heavy object as she heeled well over to port during the storm, exposing the starboard side of her hull below the waterline.

22. That it was JEANETTE MARIE that stove in the hull of DIABLESSE and caused the latter vessel to sink really cannot be questioned. The post-storm photographs of the two vessels show multiple

pieces of the hull of DIABLESSE and a heavy piece of the stainless steel starboard side boarding gate of DIABLESSE on the deck of JEANETTE MARIE after the storm. The only way these could have gotten from DIABLESSE to JEANETTE MARIE was to have been deposited there as JEANETTE MARIE repeatedly rammed DIABLESSE during the storm. There is also substantial evidence of the transfer of bottom paint of DIABLESSE to JEANETTE MARIE. This could only have occurred as DIABLESSE rolled toward her port side as the wind pushed on the starboard side of her rigging during the storm, causing the lower portion of her hull below the water line to be exposed. As JEANETTE MARIE battered the exposed underside of DIABLESSE, her bottom paint was transferred to JEANETTE MARIE.

23. The facts that JEANETTE MARIE was found in DIABLESSE's slip, sitting on top of the submerged DIABLESSE, along with pictures of the extensive damage below the water line to the bow area of JEANETTE MARIE<sup>3</sup> is conclusive evidence that JEANETTE MARIE is the vessel that pounded the hull of DIABLESSE until she sank.

24. Based on their testimony and actions, the Morrisons obviously were aware of the approach and imminent landfall of Hurricane Ike at

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<sup>3</sup> Newberry Exhibit 5

Galveston.<sup>4</sup> While it appears that Crystal Morrison made an attempt to secure their vessel prior to landfall, it is also obvious that the Morrisons had little knowledge, experience or concern about how to do so properly.<sup>5</sup> They did not seek assistance from those with such knowledge and experience and ultimately did not do so in a prudent and seamanlike manner sufficient to weather the anticipated storm.<sup>6</sup> I base this assessment on the following:

- a. The lines used to secure the JEANETTE MARIE were small in diameter, old, chafed and worn.<sup>7</sup> In fact, defendants admitted during their depositions that they did not know how old the lines were, whether they had been through a previous storm, (a critical piece of information), what their diameter was, what their original breaking strength was, or what the displacement of S/V JEANETTE MARIE was.<sup>8</sup> JEANETTE MARIE is a 46 foot sail boat.<sup>9</sup> Comparable Heritage 46's have displacement of over 30,000 lbs.<sup>10</sup> Each of these pieces of information is critical in determining whether a dock line can be relied on to withstand a storm of any magnitude whatsoever. It is well known and is reported in many publications that lines that have been through a storm or otherwise heavily stressed lose as much as 50% of their breaking strength. Prudent practice is to replace all lines after a storm and, if the history of lines is not known, to replace them even without a storm. It is readily apparent from looking at the photographs of the lines provided by the owners of JEANETTE MARIE,

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<sup>4</sup> L. Morrison at 31:25; C. Morrison 22:11 – 25.

<sup>5</sup> C. Morrison at 21:3-8; 30:8-14; 23:19; 25:11; 34:21-35:11.

<sup>6</sup> C. Morrison at 30:19-31:3.

<sup>7</sup> Newberry Exhibit 2:photos 1 – 16.

<sup>8</sup> L. Morrison at 43:8-44:16, 45:7-8, 46:7-17, 52:7-13 and C. Morrison 26:6-12, 35:12-36:2.

<sup>9</sup> L. Morrison 63:12 – 18.

<sup>10</sup> L. Morrison 65:12 – 24.

that the lines were worn, old and not in any respect sufficient to withstand the storm that was predicted to hit Galveston. The Morrisons had the boat for over a year yet testified they had never bought or replaced a single line on their sailboat.<sup>11</sup> Nor has Larry Morrison ever concerned himself with weight of the boat compared with the breaking strength of the docking equipment.<sup>12</sup>

- b. The cost to replace and add additional lines to JEANETTE MARIE sufficient to withstand both the predicted and the actual wind velocity experienced at Harborwalk Marina during Hurricane Ike would be less than \$350.<sup>13</sup> That price would include two Bow, Stern, breast and forward and aft spring lines of  $\frac{3}{4}$  " inch diameter, which have a breaking strength of 16,300 pounds when new.<sup>14</sup>
- c. It is also apparent from the photographs that the lines used to secure JEANETTE MARIE were not used properly. Lines were lead around sharp edges without chafe gear, which is guaranteed to cut through them almost immediately. In the one place chafe gear was present, it was in the wrong place. Photograph, exhibit Newberry 2, A9, shows the chafe gear in the middle of the line, mid-way between the dock and the chock. This is useless; the chafe gear should have been placed around the line where it passes through the chock. A more detailed description with pictures is found in my report attached and adopted as if fully set out herein.<sup>15</sup>
- d. The starboard side mid-ship breast line was cinched down as tightly as possible.<sup>16</sup> This means that the vessel cannot roll as the wind pushes on the rig, without snapping the mid-ship breast line. Once that line snapped, additional load was placed on the other lines.<sup>17</sup>

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<sup>11</sup> L. Morrison at 43:8-44:13, 46:7-17.

<sup>12</sup> L. Morrison 65:25 thru 66:2.

<sup>13</sup> Newberry Exhibit 4.

<sup>14</sup> Newberry Exhibit 4.

<sup>15</sup> Newberry Exhibit 2.

<sup>16</sup> C. Morrison 24:3 – 19.

<sup>17</sup> Newberry Exhibit 2.

- e. One of the keys to the cause of the loss of the DIABLESSE is the fact that the finger pier to which JEANETTE MARIE was secured and all of the cleats on the dock and on JEANETTE MARIE made it through the storm in tact while her dock lines parted. This clearly indicates that it was the dock lines that failed, not the dock and not the boat cleats or dock cleats.<sup>18</sup>

25. The manner in which S/V JEANETTE MARIE was secured in anticipation of the storm, virtually assured that the lines would fail.

26. The sequence of events that took place during the storm occurred as a direct result of poor preparation by the defendants and improper equipment.

27. While Hurricane Ike was a significant hurricane, there was nothing about it that rendered it beyond the warnings posted or of greater strength than proper vessel preparations would have endured. In fact, while there was a great deal of publicity about vessels that washed up on the highways, what went unreported was that the vast majority of vessels in the Galveston Bay area, properly and prudently secured in their slips, made it through the storm without significant damage.

28. The probability of significant damage to the property of others nearby from improperly secured vessels breaking free and hammering properly secured vessels was equally high.

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<sup>18</sup> C. Morrison 32:11 – 18.

29. During Hurricane Ike, JEANETTE MARIE's dock lines failed, causing her to be blown down on top of DIABLESSE, pounding a hole in her and causing DIABLESSE to sink in her slip where, until then she had been safely moored.

30. The vessels at issue were in a marina that had floating piers and those piers remained in place throughout the hurricane. Rather than the tidal surge, it is only the wind that is at issue here.

#### Steps that Would have Avoided this Incident

31. It is my opinion that had JEANETTE MARIE been secured with lines of the proper age, size and number, lead in a seamanlike and prudent manner, properly protected by chafe gear, JEANETTE MARIE would have stayed safely in her slip throughout the storm and S/V DIABLESSE would have survived the storm.

32. This would have entailed use of two sets of Bow, Stern, breast and forward and aft spring lines, properly led, chaffing gear for each, properly applied. Properly rigged in anticipation of 95 to 120 mph winds, JEANETTE MARIE would have had one complete set of breast and spring lines rigged to her cleats and the dock cleats and another complete set rigged



from dock cleats to hard points on the boat such as the mast, anchor windlass and winches.

33. Attached hereto as exhibit Newberry 3 is a sketch of the proper way to rig a sailboat in a floating slip in anticipation of high winds. This sketch comes from the Texas Sea Grant College Program, a readily available reference source. Similar instructions are found in basic sailing books, sailing magazines, class materials, government and insurance company flyers setting out storm or hurricane preparedness, boat retailers catalogs, etc.

34. The total cost of these new lines would have been no more than \$350 and taken no more than two hours to rig.<sup>19</sup>

#### Fair Market Value of S/V DIABLESSE

35. The popularity of this model sailing vessel is such that people travel from all over the world to find and purchase a Beneteau First 42. DIABLESSE, in fact, won “Boat of The Week” at the prestigious Key West Race Week in 1989.

36. Significant restoration and improvements such as restored teakwood decks, new Garmin network integrating, 10” chart plotter, sonar,

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<sup>19</sup> Newberry Exhibit 4.

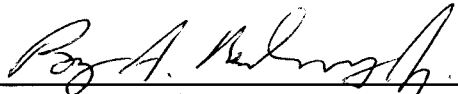
radar, XM radio, XM weather, wind instruments, single side band radio and VHF radio; new interior upholstery, cushions, headliner; all new mast, boom, sails, running rigging, standing rigging, stanchions, and life lines are representative of the successful effort to make this boat better than new or a comparable new boat.

37. In light of the extensive restoration, improvements, maintenance and overall condition of DIABLESSE and based on my experience and training I was able to place the value of the DIABLESSE at \$210,000 immediately prior to her loss. The cost to repair and return her to service would have been considerably more than that given that her hull had been stove in and holed and she had been completely submerged in salt water for several days. The mechanism by which she was holed involved repeated battering by JEANETTE MARIE. When this happens, one cannot simply put a fiberglass patch on the hole. One must carefully examine the frames and stringers and internal bulkheads that stiffen the hull and provide structural integrity to it. This is an expensive and time-consuming process involving the use of x-ray equipment, looking for small cracks. The well-reported loss of CYNTHIA WOODS in 2008 was due to a loss of structural integrity of the hull, which allowed the keel to become unattached. Moreover, all of DIABLESSE's electronics would have had to be replaced.

Salt water and electronics simply do not mix well for obvious reasons. Because of her immersion, all winches would have had to have been removed, cleaned and repacked with bearing grease, her engine would have had to have been "pickled" and then completely overhauled, her stove, and all other electrical and gas powered equipment would have required complete overhaul or disposal. Finally, all charts, all other paper and cloth goods inside her would have had to be disposed of or at least thoroughly cleaned. The bottom line is that the cost of doing all of the above to bring her back to the condition she was in prior to her sinking would have well exceeded DIABLESSE's fair market value. The hull was not repairable and replacing it alone would have cost over \$400,000. In my opinion, based on over 30 years experience surveying vessels and recommending repairs, the needed repairs to the DIABLESSE after Ike well exceeded her fair market value prior to the allision. The DIABLESSE was deemed a constructive total loss.

I **ROY A. NEWBERRY JR.** declare under penalty of perjury of the laws of the United States that the forgoing is true and correct.

Executed this 26<sup>th</sup> day of January 2010.

  
\_\_\_\_\_  
Roy A. Newberry, Jr.

NEWBERRY & ASSOCIATES MARINE SURVEYING COMPANY  
P. O. BOX 998 • SEABROOK, TEXAS 77586  
PHONE 281-470-7577 • FAX 281-470-7742

## ROY A. NEWBERRY, JR.

### BUSINESS AND MARINE-RELATED EXPERIENCE

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1982—Present      Owner of Newberry & Associates Marine Surveying Company, in Seabrook, Texas.

### SERVICES INCLUDE

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Condition and valuation surveys of yachts and pleasure craft of all sizes; damage surveys and accident investigations; consulting and expert witness relating to yachts and pleasure craft; supervisor of marine investigation staff and worldwide yacht inspections and deliveries.

### PERSONAL DATA

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Born September 3, 1953 in Galveston, Texas.

Over 375,000 ocean miles logged on powerboats, sailboats, commercial boats, and yachts of all sizes. Areas of operation: Pacific Ocean; Atlantic Ocean; Gulf of Mexico; Caribbean Sea; Great Lakes of North America; and Mediterranean Sea, including Ionian and Aegean Seas. Multiple sailboat racing records.

### PUBLIC SPEAKING EXPERIENCE

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Conducted numerous boating seminars and keynote speaker at nearly every yacht club and yachting organization in the Houston-Galveston area regarding safety at sea, preventive maintenance and navigation.

### INSURANCE & LOSS MANAGEMENT COMPANIES REPRESENTED

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- Lloyds of London Insurance Company
- State Farm Insurance Company
- Farmers Insurance Company
- Old United Vantage Casualty Company
- USAA Insurance Company
- Underwriters Adjustment Bureau
- Midlands Claim Administrators, Inc.
- Essex Insurance Group
- Progressive Insurance Company

- Travelers Insurance Company
- Chubb Insurance Group
- Fireman's Fund
- Universal Loss Management
- Royal & Sunalliance
- American Modern Insurance
- Marine Claims Specialist

- 1982 Master/Operator of a 98-foot twin diesel engine motor yacht owned by J. W. Mecom of New Orleans, Louisiana. Area of operation: Gulf of Mexico, Florida's east coast, and Bahamas.
- 1981-1982 Master/Operator of a 97-foot triple diesel engine archeological research vessel. Duties included: supervision of total vessel re-fit and conversion from crew boat to research vessel. Area of operation: Gulf of Mexico and Florida's east coast.
- 1979-1981 Master/Operator of several oil & mineral seismic research vessels up to 295 gross tons. Area of operation: from Brownsville, Texas to Tampa, Florida and Mexico's Bay of Campeche.
- Master/Operator of several utility boats, supply boats and crew boats up to 300 gross tons.
- 1977-1979 Participated in the design, construction and repair of semi-custom ocean racing sailboats for Island Yacht Corporation and Yacht Service, Inc.
- 1974-1977 International Longshoreman's Association (ILA Local 307) in Galveston, Texas. Duties included: loading, unloading, and supervising the loading & unloading of ships' cargoes of every type.

#### PROFESSIONAL LICENSES AND MEMBERSHIPS

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- |              |  |
|--------------|--|
| 1999—2004    | Member, International Association of Marine Investigators, Inc.  |
| 1987—Present | Member, Society of Accredited Marine Surveyors (SAMS)  |
| 1987—Present | Certified IMS/IOR Measurer #42, United States Yacht Racing Union (USYRU), now United States Sailing Association (USSA); Duties include extensive measuring of high-performance ocean racing sailboats, including righting moments and stability testing. |
| 1988—1996    | USYRU (now USSA) Certified Judge   |
| 1988—1996    | Member, Gulf Coast Yacht Brokers Association   |
| 2003—2006    | Member, Houston Yacht Club   |

1981—Present	Member, USYRU (now USSA)
2000—Present	Race Committee Member, Texas Sailing Association & Junior Olympics
2000—Present	Youth Sailing Program Volunteer, Lakewood Yacht Club
1981—Present	Charter Member/Founder, Clear Lake Racing Association
1983—Present	Member, American Boat & Yachting Council (ABYC)
1982—1993	Member, Galveston Bay Cruising Association (GBCA)
1983—1993	Safety Inspector for Texas Ocean Racing Circuit
1980—Present	Member, Lakewood Yacht Club
1985—1989	Member, Texas Mariners Cruising Association
1984—1988	Scouting Coordinator/Counselor, Sam Houston Area Sea Explorers
1982—1989	United States Coast Guard 300-Ton and 500-Ton Master's Licenses
1979—1989	United States Coast Guard 100-Ton Ocean Operator's License
1987	Commissioned Admiral in the Texas Navy; award for outstanding maritime community service

#### POWERBOAT DELIVERIES

R/V Locator	97' Research Vessel	Entire Gulf of Mexico, including Bay of Campeche
	Grand Banks 42	Seabrook, Texas to Grande Isle to Key West to Dayton Beach to Norfolk, Virginia to Westport, Massachusetts
	Grand Banks 49	Seabrook to Miami to Norfolk to Boston
	Grand Banks 38	Seabrook to Grand Isle to Apalachicola to Tampa to Ft. Myers to Stewart to Jackson to Charleston, SC to Beaufort, NC to Yorktown, VA
	Grand Banks 46	Seabrook to Grand Isle to Key West to Norfolk to Yorktown
	Grand Banks 42	Seabrook to Grand Isle to Key West
	Grand Banks 42	Key West to Grand Isle to Seabrook
	Grand Banks 46	Seabrook to Corpus Christi
Lady Kathlyn	Grand Banks 46	Ft. Lauderdale to Venice to Seabrook
	Grand Banks 36	Ft. Lauderdale to Ft. Myers to Apalachicola to Venice to Galveston to Corpus
	Ocean Alexander 70	Tampa to Seabrook
Little Toot	Pilgrim 42	Seabrook to Grande Isle to Tampa

	DeFever 60	Seabrook to Ft. Lauderdale
	DeFever 59	Tampa to Gulfport to Seabrook
	DeFever 44	Tampa to Grand Isle to Seabrook
	DeFever 49	Ft. Lauderdale to Grand Isle to Seabrook (TV)
	DeFever 44	New Orleans to Seabrook
	DeFever 49	Ft. Lauderdale to Key West to Grand Isle to Seabrook
Shenanigans	DeFever 49	Ft. Lauderdale to Venice to Seabrook
Panache	Burger 97	Ft. Lauderdale to Bermuda to Azores to Gibraltar to Malta to Athens to Kavala, Greece
Candy Cane	Camcraft 98	Galveston to Panama City, FL to Ft. Myers to Stewart to Lantana
Rio Grande	Camcraft 98	Lantana to Vero Beach, Florida
Drumbeat	Graves 60	Stewart to Bahamas
Grandmother	Lantana 98	Galveston to Panama City to Key West to Palm Beach to Bahamas
Grandmother	Lantana 98	Bahamas to Stewart to Ft. Myers to New Orleans
Jammin'	Chung Hwa 42	Galveston to Tampa
Jammin'	Chung Hwa 42	Galveston to Corpus Christi to Galveston
Papa	Merritt 38	Galveston to Grand Isle to Panama City to Ft. Myers to Stewart to Lantana to Bahamas
	Albemarle 32	Stewart to Ft. Myers to Apalachicola to Panama City to Sabine to Seabrook
	Hatteras 58 LRC	Seabrook to Isla Mujeres, Mexico to Belize to Guatemala
	Hatteras 58 LRC	Guatemala to Cozumel to Seabrook
Iroquois Arrow	85' Research Vessel	Gulf of Mexico, between South Padre Island and New Orleans
Mr. Justin	65' Utility Boat	Gulf of Mexico, between Corpus Christi and New Orleans
ONI 1	65' Research Vessel	Gulf of Mexico, between Galveston and New Orleans
	165' OSB	Offshore at Freeport
Thornton	60' Crew Boat	Galveston Bay and offshore
Java Seal	185' OSB	Offshore between Galveston and New Orleans
China Seal	185' OSB	Offshore between Galveston and New Orleans
	GB Europa 42	Seabrook to Grand Isle to Sarasota, Florida



GB Eastbay 43	Sarasota to Apalachicola to Gulfport to Intracoastal City to Seabrook
McKenna 67	Ft. Lauderdale to Venice to Grand Isle to Seabrook
Ocean 40	Seabrook to Grand Isle to Apalachicola to Tampa to Key West to Miami
Ocean 40	Fort Walton Beach, Florida to Venice to Seabrook
Ocean 40	Seabrook to Cocodri, Louisiana

### SAILBOAT DELIVERIES

Floridita	Cal 29	Galveston to Key West to Bahamas Galveston to Veracruz to Tuxpan, Mexico to Corpus Christi to Galveston Galveston to Veracruz to Isla Lobos to Corpus Christi to Galveston Plus 5 years ocean racing in Gulf of Mexico
Striker	Peterson 36	Galveston to Veracruz to Corpus Christi to Galveston Galveston to Veracruz to Corpus Christi to Galveston Plus 2 years ocean racing in Gulf of Mexico
Boomer II	C&C 38	Galveston to Veracruz to Tuxpan to Corpus Christi to Galveston Plus 1 year ocean racing in Gulf of Mexico
Contra el Viento	Gulfstar 50	Galveston to Veracruz to Tuxpan to Isla Lobos to Corpus to Galveston
Diablese	Benateau 42	Galveston to Veracruz to Isla Lobos to Galveston Galveston to Key West—Key West Race Week Key West to Galveston Plus 2 years racing in Gulf of Mexico
Lobo	Reichel/Peaugh 43	Galveston to Key West—Key West Race Week Key West to Galveston One season offshore in Gulf of Mexico
Aga	Grand Soleil 41	Ft. Lauderdale to Key West to Galveston to Seabrook Freeport, Texas to Cozumel, Mexico Cozumel to Corpus Christi Corpus Christi to Key West Key West to Galveston Freeport to Cozumel Cozumel to Galveston South Padre Island to Cozumel Freeport to Key West
Gambler	J-35	Galveston to Veracruz
	Shannon 38	Tampa to Seabrook
	Lagoon 47	Seabrook to Isla Mujeres to Belize
Surge	Baltic 39	Seabrook to Tampa (Hurricane Claudette) Tampa to Miami
Heptagon	CT 54	Seabrook to Key West

		Key West to Naples, Florida
Dragon Lady	CT 56	Miami to New York to Chicago through the Great Lakes
	Mariner 41	Isla Vieques, Puerto Rico to Grand Caymen to Seabrook
Arch Angel	Dufour 44	St. Martin to Seabrook
	McGregor 65	Seabrook to Miami to St. Thomas, V.I.
	Swan 57	Seabrook to Miami Miami to Seabrook
	CT 65	Seabrook to Key West to New York to Chicago (Hurricane Juan)
Razzledash	Soverel 26	Seabrook to Cozumel Cozumel to Galveston
Bird	Custom Trimaran	Galveston to Veracruz
Bird of Paradise	Condor 40	Galveston to Veracruz
Lobo del Mar	Peterson 44	Seabrook to Isla Mujeres Isla Mujeres to Seabrook
	Cape Dory 30	Belize to Seabrook
	Amel 44	St. Thomas to Annapolis, Maryland
El Condor	Condor 40	El Salvador to Seabrook
	Jenneau 47	Ft. Lauderdale to Key West to Seabrook
	Spencer 44	Tampa, Florida to Key West to Norfolk, Virginia
Spoiler	J-44	Seabrook to Key West to Norfolk to Newport, Rhode Island
	J-44	Newport to Key West to Seabrook
Sirena Mia	Cheoy Lee 42	Isla Mujeres to Seabrook
Shazzam	Custom 37	Isla Mujeres to Galveston
	CF 37	Cozumel to Seabrook
Wind	Cal 36	Galveston to Gulfport, Mississippi Gulfport to Cozumel
	Gulfstar 47	Seattle to San Diego
	Peterson 45	Seabrook to Veracruz
	Gulfstar 47	Seabrook to Key West

	Ron Holland 48	Seabrook to Key West (competed in Key West Race Week)
	CT 54	Seabrook to Tampa—with kids on board
	Hans Christian 46	Ft. Lauderdale to Seabrook
	Hans Christian 38	Seabrook to Ft. Lauderdale
Panacea	Vagabond 47	Seabrook to Key West
	Pearson 37	Tampico, Mexico to South Padre Island
	Pearson 63	Isla Mujeres to Seabrook
	Ross 30	Newport, California to Encinada, Mexico Encinada to Newport
Gallant Fox	Wildcat 35	Seabrook to Tampa
Callisto	Vagabond 42	Galveston to Grand Isle to Key West to Miami
	Grand Banks 47	Seabrook to Ft. Jefferson, Florida to Key West
Petty Cash	Morgan 51	Tampa to Seabrook
	Ericson 35	Tampa to Seabrook

**DISCLAIMER**

**The deliveries listed in this resume are not a complete list of all boat deliveries made by Roy Newberry, Jr.**

An Independent Marine Damage Survey by DM290501R  
NEWBERRY & ASSOC. MARINE SURVEYING CO.  
P. O. Box 998 Seabrook, Texas 77586  
Office 281-470-7577 Fax 281-470-7742

## DAMAGE REPORT, STORM MOORING PROCEDURES AND PRECAUTIONS, SEQUENCE OF THE EVENT AND YACHT EVALUATION

Date Of Report: November 24, 2009  
Dates Of File Review: March 29, 2009 to November 24, 2009

Representing:  
Mr. Greg Gladden  
3017 Houston Avenue  
Houston, Texas 77009  
M 713-443-6633  
W 713-880-0333  
F 713-880-4018

Date Of Loss 09/13/08 Hurricane Ike

### GENERAL VESSEL INFORMATION

Owner/insured: Greg Gladden  
Name Of Vessel: DIABLESSE  
Model: Beneteau First 42  
Builder: Beneteau Yachts  
Where Built: France  
Year Built: 1984  
Hull ID Number: 001740.12.83 (taken from ships papers)  
Official Number: USCG DOC # 665570  
Port of Registry: HOUSTON, TEXAS  
Reported:  
LOA: 42'00" Beam: 12'11"  
Draft: 07'03" Displacement: 27,402 lbs

### VESSEL DESCRIPTION

A 42' fiberglass sloop rigged racing/cruising sail boat with aluminum mast spreaders and boom. Stainless steel standing rigging with bronze and stainless steel turnbuckles and fittings. Stainless steel bow and stern pulpits with double stainless steel wire lifelines on stainless steel stanchions. Aft cockpit with wheel steering. Inboard diesel engine. White hull with white cabin sides, teak decks.

## LOCATION OF SURVEY

NA - subject yacht was lost during hurricane Ike.

## LOCATION OF LOSS

Pier E slip number 21 at Harbour Walk Marina in Hitchcock, Texas. This marina is located on the north side of West Galveston Bay just north of the Intracoastal Water Way.

## ALLEGATIONS AND SUMMARY OF EVENTS

The following is a brief synopsis of this incident as this Surveyor understands it to have occurred, based on oral and written statements taken from Mr. Greg Gladden, the depositions of Mr. and Mrs. Larry Morrison and reviewing documents and photographs supplied by Mr Greg Gladden. And oral statements from Mr. Allan Walker the manager of Harbour Walk Marina.

On or about September 10, 2008 hurricane Ike entered the Gulf Of Mexico and began a track towards the Texas Coast. By Friday morning September 12, 2008 the storm had turned more north and began a track straight for Galveston, Texas. On Thursday morning September 11, and all day Friday September 12, Mr. Gladden reported that he went to the marina and began to secure his yacht for the storm. Removing Sails or securing sails, removing canvas and loose items on the deck, adding additional mooring lines with extra fenders and deploying an anchor and chafe protection to mooring lines. Mr. Gladden stated that he was at the marina the entire day on Friday and did not leave the marina until after dark. Mr. Gladden reported that the marina was really busy with other people making the same preparations for the storm.

Located on the same pier E and on the same side of the pier as Mr. Gladdens Yacht but out towards the end of the pier was another sailboat owned by Mr. and Mrs Larry Morrison. This boat the JEANETTE MARIE is a 1976 Heritage 46 foot heavy cruising sailboat weighing between 30,000 and 35,000 Lbs.

Mr. Gladden reported that at no time during the two days of preparing his boat Thursday or until Friday evening September 12, did he see anybody tending to the Heritage 46.

On the morning of September 13, 2008 at around 0200 hurricane Ike made landfall on the upper Texas Coast with the eye of the storm passing about 2 miles east of Harbour Walk Marina.

After the storm neighbors in the marina discovered that Mr. Gladden's boat had sunk in her slip and the Heritage 46 JEANETTE MARIE owned by Mr. and Mrs. Morrison had broken loose from her slip, sailed through a finger dock and came to rest on top of Mr. Gladden's Beneteau 42.

## SEQUENCE OF THE EVENT

NOTE: The evidence as shown in the photographs reviewed and presented is overwhelming in support of the following sequence of events.

1) The JEANETTE MARIE was very poorly secured for the storm that was predicted to hit. She was moored with mostly small diameter line, mostly old, chafed and worn line and clearly no additional lines were used on her port side. See drawing A and photos 1-16.

There was almost no chafe protection where lines passed through chocks and over toe-rail and one port stern line is passed around the sharp edge of a aluminum turning block pad. See photos 5 & 15. The diameter of almost all of the lines appears to be no larger than 5/8". There was no aft spring line on her port side to prevent the boat from moving forward. Only one forward spring line. See photos 7 & 9.

2) Mrs. Morrison stated in her deposition that she tied all of the mooring lines as tight as she could get them. On the short lines this was a very bad mistake especially on the short blue brest line on the port side. See photos 6, 7, 8 & 9. This line would have not had enough length to stretch. This line appeared old and worn and was most definitely, the first line to break when the boat was heeling over from the wind blowing from her port side. When this line broke there was only one small diameter bow line on her port side to hold the boat. This single bow line appeared to be old and was already chafed. See photos 10.

3) When the blue brest line broke on her port side the port bow line was the next line to break. When the port bow line broke the bow of the JEANETTE MARIE blew down wind to starboard and the first point of contact with the pier was where the dinghy was moored. See drawing B. See photos 17-22. Note: There is no damage to the pier in front of where the JEANETTE MARIE was moored. The JEANETTE MARIE came down on top of the dinghy crushing its port side into the pier and then the JEANETTE MARIE hit the pier. Note: Blue bottom paint transfer on the dinghy from the JEANETTE MARIE. See photos 21-22.

Note: There are mid-slip wood pilings at the ends and in the middle of all slips on this pier. The JEANETTE MARIE probably rotated off the mid-slip piling for a short while and eventually took down this piling.

4) The second point of impact JEANETTE MARIE made was the finger pier where DIABLESSE was moored. See drawing C. See photos 23-26. Note: Blue bottom transfer paint on the bow of JEANETTE MARIE. Note: During this time the JEANETTE MARIE would have been facing away from the wind and not heeling as much as the DIABLESSE. The DIABLESSE would have been still sideways to the wind and heeling 20 to 30 degrees to her port side exposing her starboard side and bottom to the bow of JEANETTE MARIE. Evidence of this is clear in photos 27-28. It is clear that the JEANETTE MARIE broke apart the first half of the finger pier, riding up over the top of the pier, flipping this part of the pier and probably shoving it under the starboard side of DIABLESSE. At this point the JEANETTE MARIE would have been pushing down and riding on top of the mid-slip piling in her slip. She had also pulled loose or broken off the mid-slip piling at the entrance of her slip that was tied to her starboard stern.

5) The next sequence of this event was the JEANETTE MARIE came through the finger pier breaking apart the first half of the pier. The other half of the pier rotated toward the opening of the slip. Now both boats were side to side with JEANETTE MARIE's port side against DIABLESSE's starboard side. See drawing D and photos 30-33. At this time both boats were sideways to the wind and were heeling between 20 to 30 degrees. See drawing D1. At this time the JEANETTE MARIE's port hull side hull to deck joint and gunwale was pounding in and holing the starboard hull side and bottom of DIABLESSE. Evidence of this is clearly seen with the bottom paint transfer of DIABLESSE seen on the starboard hull side and gunwale of the JEANETTE MARIE. See photos 34-41. Further evidence of this sequence is the stainless steel dinghy hand-rail Mr. Gladden had installed on the starboard hull side of DIABLESSE. See photos 42-43. During the time the JEANETTE MARIE was pounding the starboard hull side and the bottom of the DIABLESSE this hand-rail was dislodged from DIABLESSE and landed on the starboard deck of the JEANETTE MARIE. See photos 43-44. Further evidence of the heeling action of these boat can be seen with the grass and debris seen on the starboard hull side of the JEANETTE MARIE. See photos 45. Further evidence of the contact between the JEANETTE MARIE and DIABLESSE is clearly seen with the large pieces of fiberglass on the deck of the JEANETTE MARIE. See photos 46-47. Note: There is no part of the JEANETTE MARIE seen in ANY photographs where these large pieces of fiberglass could have come from other than the DIABLESSE's hull side.



Note: During this event the JEANETTE MARIE pulled up or broke off her starboard side aft mid-slip piling at the entrance of her slip. She pushed over her mid-slip middle piling in the middle of her ship. During the time when JEANETTE MARIE was side to side with DIABLESSE the mid-slip piling in the middle of DIABLESSE'S slip became entangled with JEANETTE MARIE's stern piling she was dragging. These two pilings ended up between the JEANETTE MARIE and DIABLESSE. See photos 48-49.

Note: During this event it should be noted that the tides were between 10 and 15 feet above normal. See photos 50.

### DAMAGE/LOSS FOUND

The subject yacht was holed and sank in her slip by another yacht. The subject yacht was deemed a C. T. L. (Constructive Total Loss) raised and taken to a salvage yard for disposal. See CONCLUSION AND OPINION and CAUSE OF LOSS

### CONCLUSION AND OPINION on CAUSE OF LOSS

This surveyor reviewed numerous photographs of the JEANETTE MARIE as she was moored before the storm and as she came to rest on top of Mr. Gladdens Beneteau 42 after the storm.

It is very clear that very poor preparation was made to secure the JEANETTE MARIE in advance of this storm. The mooring lines were at best 5/8" or 1/2" in diameter and the boat appeared to be only secured with single lines at the bow and stern. (Note: There was more than adequate warning, at least 72 hours notice that this storm was going to impact this area) It is clear from the photographs reviewed that the JEANETTE MARIE had broken loose from her slip, crashed through a finger pier and crashed into Mr. Gladdens boat.

There was no evidence of the failure of the dock that the JEANETTE MARIE was moored to. None of the mooring cleats had pulled out of the dock. The boat clearly broke loose because the mooring lines were in poor condition and too small for this size boat.

There was no evidence that the owners attempted to properly install chafe protection on any of the mooring lines. The loss of Mr. Gladden's yacht and the damage to the pier was clearly caused by the JEANETTE MARIE.

Mr. Gladden was preparing his yacht for extended cruising. This surveyor recalls having a conversation with Mr. Gladden approximately one month before this storm. During this conversation Mr. Gladden informed me that he was in the final stages of making improvements and adding extensive additional equipment to the yacht. At that time as I recall Mr. Gladden



stated that he was about 95% complete with the total restoration and adding equipment. The reason for this conversation was Mr. Gladden was wanting to schedule a marine survey so he could re-evaluate the yacht to reflect the improvements and additional equipment. As I recall the conversation ended with, we were going to wait until he was 99% complete with the project.

At the request of Mr. Gladden this surveyor has reviewed an extensive list of additional equipment, improvements and photographs he had made to the yacht prior to the loss. It was very clear after reviewing these documents that the yacht was at least 99% complete and ready for extended cruising. (Note: The Beneteau First 42 is a very popular model yacht for its comfort, performance and sea worthiness, These Yachts were very well built and sought after.)

It is this surveyors opinion that if a survey had been performed immediately before the loss, the estimated fair market value of Mr. Gladdens yacht would have been estimated between \$180,000.00 and \$210,000.00 U.S. dollars.


## STATEMENT

Examination of the documents, photographs, listening and reading statements was performed to determine the negligence of the owners of the JEANETTE MARIE (failure to properly secure for hurricane) which resulted in the total loss of Mr. Gladdens Beneteau 42 DIABLESSE.

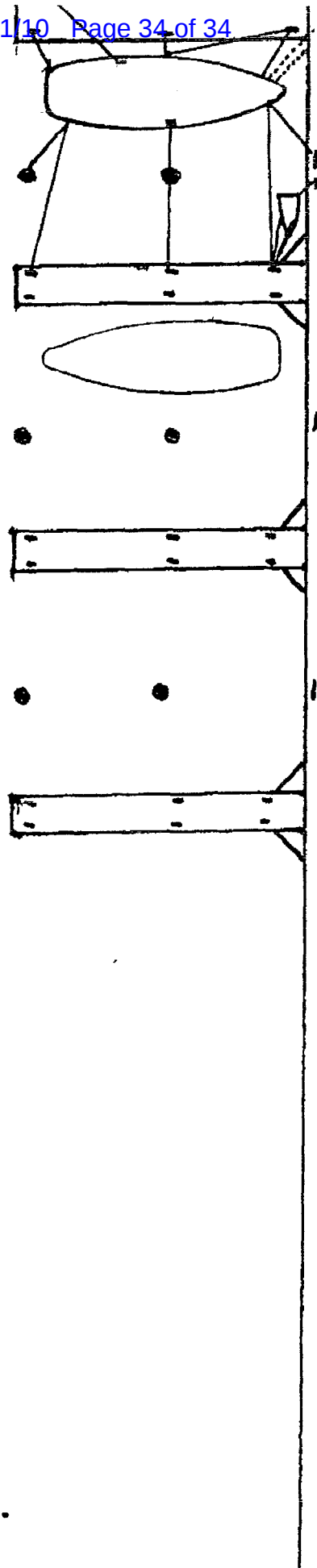
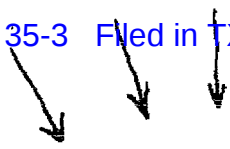
Unless otherwise specified, only the documents provided by Mr. Gladden were reviewed.

This report is based on the facts presented and discovered, based on my opinion with no warranty either specified or implied.

This report was conducted and signed without prejudice.



Roy Newberry Jr.  
SAMS AMS YSC



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